

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Wednesday, September 1, 2021

Hearing Room 1539

10:00 AM
2:00-00000

Chapter 0

#0.00 All hearings scheduled for today will be conducted remotely, using ZoomGov video and audio.

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Hearing conducted by ZOOMGov.

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Docket 0

Courtroom Deputy:

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Chapter 0

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

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2:21-14473 Allen Issa Sayegh and Lina Sayegh

Chapter 7

**#1.00 Reaffirmation Agreement Between Debtor and American Honda Finance Corporation
[Presumption of Undue Hardship]**

Docket 10

Courtroom Deputy:

ZoomGov Appearance by:

8/31/21 - Priscilla Solario, (909)529-1011

Tentative Ruling:

Is debtor driving the vehicle? If not, who is? Is original contract being modified in any way to benefit the debtor? Is debtor current on the payments? Will the debtor be able to remain current on the payments? Hearing required.

Party Information

Debtor(s):

Allen Issa Sayegh

Represented By
Priscilla C Solario

Joint Debtor(s):

Lina Sayegh

Represented By
Priscilla C Solario

Trustee(s):

David M Goodrich (TR)

Pro Se

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10:00 AM

2:21-15320 Alejandro Gonzalez Vergara

Chapter 7

**#2.00 Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation
[Presumption of Undue Hardship]**

Docket 16

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Is debtor driving the vehicle? If not, who is? Is original contract being modified in any way to benefit the debtor? Is debtor current on the payments? Will the debtor be able to remain current on the payments? Hearing required.

Party Information

Debtor(s):

Alejandro Gonzalez Vergara

Represented By
Frank J Alvarado

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

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2:21-15501 William Rivera

Chapter 7

#3.00 Debtor's Motion to Avoid Lien with GCFS, Inc.

Docket 7

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Debtor cannot claim as exempt under section 522(f) property that he no longer holds an interest in as of the petition date. To the extent that the sheriff still holds funds that have not yet been turned over to the creditor, the motion may be granted. (And, although this is not the appropriate vehicle for obtaining this relief, it goes without saying that the creditor must stop garnishing post-petition wages and that any post-petition wages turned over to creditor should be returned to debtor.)

With regard to funds released to creditor, debtor must first demonstrate that the provisions of section 522(h) apply -- that this was a preferential transfer. What is the applicable state law as to the existence of a judicial lien? Does a creditor who garnishes wages end up with a lien, and, if so, when does it attach? And does the debtor need to bring an adversary proceeding to avoid a transfer under section 522(h)? And if there is no judicial lien, in any event, only transfers made within 90 days prior to the bankruptcy filing would constitute a preference. Based on the paystubs, it appears that the debtor is seeking to recover garnishments from more than 90 days before the bankruptcy (although perhaps the relevant transfer date is the date the sheriff released the funds and not the date on which they were garnished).

Hearing required.

Party Information

Debtor(s):

William Rivera

Represented By
David P Farrell

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CONT... William Rivera

Chapter 7

Movant(s):

William Rivera

Represented By
David P Farrell

Trustee(s):

Peter J Mastan (TR)

Pro Se

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2:20-20266 Enio Atrian and Luz K. Hernandez

Chapter 7

#4.00 Debtor's Motion to Reopen Chapter 7 Case

Docket 19

***** VACATED *** REASON: GRANTED. APPEARANCES WAIVED.**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Grant motion. Waive appearances. Movant is authorized to upload order reopening case for a period of 30 days after entry of the order to permit debtor 2 to file an amended/corrected statement of social security number and directing the clerk to enter an amended/corrected notice of discharge using the correct last four digits of debtor 2's social security number.

Party Information

Debtor(s):

Enio Atrian

Represented By
Jaime A Cuevas Jr.

Joint Debtor(s):

Luz K. Hernandez

Represented By
Jaime A Cuevas Jr.

Movant(s):

Enio Atrian

Represented By
Jaime A Cuevas Jr.
Jaime A Cuevas Jr.

Luz K. Hernandez

Represented By
Jaime A Cuevas Jr.
Jaime A Cuevas Jr.

Trustee(s):

Peter J Mastan (TR)

Pro Se

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2:20-11547 Gennady Moshkovich

Chapter 7

#5.00 BOBS, LLC'S Motion RE: Objection to Claim Number 11 by Claimant Yana Tammakh

Docket 405

***** VACATED *** REASON: 8/17/21 - ORDER APPROVING
STIPULATION ENTERED. OFF CALENDAR;**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

8/17/21 -- Court approved stipulation resolving claim objection. OFF
CALENDAR. NO APPEARANCE REQUIRED.

Party Information

Debtor(s):

Gennady Moshkovich

Represented By
David R Haberbusch

Movant(s):

BOBS LLC

Represented By
David Jacob

Trustee(s):

Heide Kurtz (TR)

Represented By
Thomas H Casey

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2:20-11547 Gennady Moshkovich

Chapter 7

#6.00 BOBS, LLC'S Motion RE: Objection to Claim Number 2 by Claimant Southern California Edison

Docket 409

***** VACATED *** REASON: GRANTED. SUSTAIN OBJECTION.
APPEARANCES WAIVED.**

Courtroom Deputy:

ZoomGov Appearances by:

8/30/21 - David Jacob, (213)293-5931

Tentative Ruling:

Grant motion. Sustain objection. Disallow claim no. 2 as duplicative of claim no. 1. APPEARANCES WAIVED. Applicant is authorized to upload order consistent with tentative ruling.

Party Information

Debtor(s):

Gennady Moshkovich

Represented By
David R Haberbush

Movant(s):

BOBS LLC

Represented By
David Jacob

Trustee(s):

Heide Kurtz (TR)

Represented By
Thomas H Casey

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2:20-11547 Gennady Moshkovich

Chapter 7

#7.00 BOBS, LLC'S Motion RE: Objection to Claim Number 6 by Claimant Dimitry Semenovich Shagal

Docket 411

***** VACATED *** REASON: 8/17/21 - ORDER APPROVING
STIPULATION ENTERED. OFF CALENDAR;**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

8/17/21 -- Court approved stipulation resolving claim objection. OFF
CALENDAR. NO APPEARANCE REQUIRED.

Party Information

Debtor(s):

Gennady Moshkovich

Represented By
David R Haberbusch

Movant(s):

BOBS LLC

Represented By
David Jacob

Trustee(s):

Heide Kurtz (TR)

Represented By
Thomas H Casey

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2:20-11547 Gennady Moshkovich

Chapter 7

#8.00 BOBS, LLC'S Motion RE: Objection to Claim Number 10 by Claimant Edward Ayzenberg

Docket 414

***** VACATED *** REASON: 8/20/21 - ORDER APPROVING
STIPULATION ENTERED. OFF CALENDAR;**

Courtroom Deputy:

ZoomGov Appearances by:

8/30/21 - David Jacob, (213)293-5931

Tentative Ruling:

8/20/21 -- Court approved stipulation resolving motion. OFF CALENDAR.
NO APPEARANCE REQUIRED.

Party Information

Debtor(s):

Gennady Moshkovich

Represented By
David R Haberbusch

Movant(s):

BOBS LLC

Represented By
David Jacob

Trustee(s):

Heide Kurtz (TR)

Represented By
Thomas H Casey

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2:21-10335 Coldwater Development LLC

Chapter 11

#9.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: Parcels in Beverly Hills, California

MOVANT: GIVE BACK, LLC.

fr. 3-30-21, 5-11-21, 5-26-21, 7-14-21

Docket 59

Courtroom Deputy:

ZoomGov Appearance by:

8/30/21 - Eryk Escobar, (202)934-4168

8/31/21 - Mitchell Rishe, (213)269-6394

8/31/21 - Aram Ordubegian, (213)629-7410

9/1/21 - Christopher Harney, (714)549-6200

Tentative Ruling:

Tentative Ruling for March 30, 2021:

Grant motion insofar as it requests comfort order clarifying that automatic stay does not preclude movant from exercising its rights and remedies as against nondebtors under its guaranties and membership interest pledge agreements.

Debtors response to the motion is that there is a sizeable equity cushion, based upon its appraisal; however, opposition does not dispute or even respond to movant's contention that the value of movant's collateral is declining in value due to debtors' continuing failure to pay real estate taxes. Trustee's sale guaranties reflect that all of the properties are tax defaulted for nonpayment of taxes going back to 2018. (Accrual of interest on debtors' obligations to movant does not constitute a loss in value for which movant is

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entitled to receive adequate protection.)

Court acknowledges that, even if there is no equity in property, as these lots are the debtors' only assets, they are necessary to any possible reorganization, but the Court is not yet in a position to determine whether any reorganization is likely to occur within a reasonable period. Court is not inclined to schedule an evidentiary hearing as to the value of the property, as the court will not rely on the existence of an equity cushion as adequate protection when there is an actual and quantifiable diminution in value occurring due to the nonpayment of real property taxes and the accrual of interest thereon.

What is the aggregate amount of real estate taxes currently outstanding with regard to the lots and at what rate do these unpaid taxes accrue interest? How much more in real estate taxes will become delinquent if not paid by April 10? If debtors want an opportunity to try to reorganize their affairs in chapter 11, they will need to at least keep the size of the debt senior to movant from increasing while they attempt to do so.

Enter adequate protection order that conditions continuation of the automatic stay on the debtors' remaining current with post-petition real estate taxes and making monthly payments to movant in an amount that is not less than the amount of interest and penalties that are accruing monthly on the unpaid real property taxes.

Set continued hearing on balance of relief requested in motion for approximately 90 days, by which time court should have a better sense of whether there is likely to be a reorganization within a reasonable period.

Final Ruling for March 30, 2021 (see order entered April 1, 2021):

Court entered adequate protection order requiring debtors to pay \$55,261.26 to lender by close of business on April 9, 2021. (Lender will promptly pay taxes and bear responsibility for any penalties if real property taxes not paid by April 10, 2021.) If debtors don't pay this amount by April 9, 2021, debtors must pay this amount plus an additional \$5,526.10 by April 15, 2021. In addition, debtors must pay \$22,972.26 by April 15, 2021 and \$7,657.42 by

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the 15th of each calendar month thereafter. Payments must be by wire or other immediately available funds. Debtors can have one 14-day cure period. Continue hearing on balance of relief to May 11, 2021 at 10:00 a.m.

Tentative Ruling for May 11, 2021:

Docket does not reflect the filing of any declarations re default, and debtor filed status report reflecting that required payments have been made. Debtor requests that hearing be taken off calendar, but court intentionally set a continued hearing to consider the issue of whether the debtor is likely to be able to propose a confirmable plan within a reasonable period. What progress has the debtor made toward confirmation of a plan in this chapter 11 case? Hearing required.

Tentative Ruling for May 26, 2021:

Debtor claims to be in compliance with adequate protection order. Revisit motion after conclusion of status conference.

Tentative Ruling for July 14, 2021:

Provided debtor remains current on adequate protection order, revisit motion after conclusion of hearing on related matters on calendar.

Final Ruling for July 14, 2021:

Continue hearing to September 1, 2021 at 10:00 a.m.

Tentative Ruling for September 1, 2021:

Provided debtor remains current on adequate protection order, revisit motion after conclusion of hearing on related matters on calendar.

Party Information

Debtor(s):

Coldwater Development LLC

Represented By

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Chapter 11

Aram Ordubegian
M Douglas Flahaut
Annie Y Stoops
Dylan J Yamamoto

Movant(s):

Give Back LLC

Represented By
Daniel A Lev
Ronald N Richards

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2:21-10335 Coldwater Development LLC

Chapter 11

#10.00 Debtor's Motion For An Order:

(1) Authorizing Bidding Procedures For The Sale Of Estate Property

(2) Approving The Sale Of Property Under 11 U.S.C. § 363 Free And Clear Of Liens, Claims, And Encumbrances, Subject To Higher And Better Offers

(3) Approving The Form And Manner Of Notice

fr. 7-14-21

Docket 83

Courtroom Deputy:

ZoomGov Appearance by:

8/30/21 - Eryk Escobar, (202)934-4168

8/31/21 - Mitchell Rishe, (213)269-6394

8/31/21 - Aram Ordubegian, (213)629-7410

9/1/21 - Christopher Harney, (714)549-6200

Tentative Ruling:

Tentative Ruling for July 14, 2021:

Court rejects Give Back's contention that, because it holds a lien on all of the lots owned by the debtors, that the debtors may not sell less than all of the lots without its consent. If a debtor can demonstrate that a sale free and clear is appropriate under section 363(f), the fact that the asset to be sold is less than all of the lender's collateral is irrelevant.

Further, the Court will not let Give Back advance the argument that the debtor is precluded from selling free and clear of other lender's secured claims. That

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is an argument for them to advance, not Give Back. If they are not objecting to a sale free and clear (or to the debtor's contention that their liens are the subject of a bona fide dispute), court will not permit Give Back to advance this argument.

None of the cases cited by Give Back for the proposition that a dispute as to the amount of a debt cannot qualify as a bona fide dispute for the purpose of satisfying the requirements of section 363(f)(4) are binding on this court, and none of these cases stands for the proposition that the dispute must relate to perfection or ownership of the debt. This court is satisfied that a dispute as to the validity and enforceability of various charges asserted by the lender in its calculation of the amount of the debt can satisfy the requirements of section 363(f)(4). There is a pending state court action based on this dispute and the lender has not succeeded in having this lawsuit summarily dismissed. The court need not adjudicate the merits of the dispute in order to assess whether or not the dispute is bona fide, but the court is satisfied that, here, Give Back's interest is the subject of a bona fide dispute.

Moreover, based on the calculations the debtor has provided, and the significantly reduced broker's fee that the debtor has negotiated (and the fact that real estate taxes cannot be double-counted -- that is, included as a lien that must be satisfied as well as added to the balance due the lender), it does appear that there will be sufficient proceeds available to satisfy Give Back's lien in full. Therefore, a sale free and clear of Give Back's lien appears warranted under section 363(f)(3) as well.

Court is not persuaded that the debtor can sell free and clear of Give Back's lien under section 363(f)(5). Prior to the BAP's ruling in Clear Channel, this court read section 363(f)(5) as standing for the proposition that a sale free and clear may be authorized under this section unless the objecting party holds an interest that gives rise to a right of specific performance. The BAP rejected this approach in Clear Channel, and there does not appear to be another mechanism under applicable nonbankruptcy law pursuant to which Give Back could be compelled to accept less than payment in full as a monetary satisfaction of its claim. However, this is irrelevant because, as set forth above, it appears that the court may approve a sale free and clear under either section 363(f)(3) or section 363(f)(4).

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Court need not finally adjudicate the amount of Give Back's claim in order to proceed with a sale. In the context of credit bidding, it is appropriate to permit Give Back to credit bid only the undisputed portion of its claim. Any other approach would be unworkable and ill-advised. If Give Back wants to bid more than this amount, it will need to bid the amount of any such excess in cash, but, if Give Back is the successful bidder and prevails when the claim dispute is resolved, any excess funds would be returned to Give Back.

Court rejects the "artificial floor" argument advanced by Give Back as a basis for disapproving a sale. If Give Back believes that the purchase price proposed in the Option A sale is artificially inflated and that the proposed purchaser either does not exist or does not intend to perform, the solution for Give Back is simple. It should not credit bid. There is no reason for Give Back to bid, either through a credit bid or a bid that is part cash and part credit, an amount that exceeds whatever Give Back believes the property is worth. If the court were to approve the Option A sale to PCV, one of two things will be true -- either PCV will perform or it will not. If PCV fails to perform, the estate will still own the property, and the estate will be enhanced by the now nonrefundable deposit of \$1.5M. If PCV performs, there will be sufficient funds available to satisfy Give Back's claim in full. (Even if Give Back believes that its claim will exceed the amount of the net proceeds, it will still have four additional lots available as collateral. And even if Give Back is correct in asserting that the value of these lots will be reduced because they will become land-locked, it is hard to imagine that these lots will be worth less than the amount necessary to satisfy what Give Back contends would be the remainder of its claim.)

Therefore, the only issue that concerns the court at this point is whether or not PCV has permitted Give Back to conduct discovery to obtain information of the kind that the Court has advised must be disclosed. Has Give Back been provided any additional information? And, if so, what, if anything, of note did this additional information reveal? As the Court has previously advised, the court will not approve a proposed sale to PCV unless PCV is forthcoming in providing Give Back with information of the kind set forth in this Court's June 15, 2021 order denying Give Back's application for an order shortening time.

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Hearing required.

(NOTE: Because court will not approve a sale to PCV under Option A unless it is persuaded that the parties are acting in good faith and have made sufficient disclosures, it would be appropriate for an order approving the sale to include a 363(m) finding. However, in light of Give Back's opposition to the sale, court would not include a waiver of the 14-day stay.

If court does not approve Option A, court will grant request that it schedule an auction for all 6 lots as set forth in Option B of the amended motion.)

Final Ruling for July 14, 2021:

Debtor must file and serve not later than July 19, 2021 supplemental/amended notice of bidding procedures. Continue hearing to September 1, 2021 at 10:00 a.m.

Tentative Ruling for September 1, 2021:

Grant debtor's request that deposit paid by Pacific Green be transferred to a segregated account and held until further order of the court. Establish a deadline for debtor to bring action for declaratory relief to resolve whether deposit must be refunded or whether debtor is entitled to retain funds.

Grant debtor's request that a hearing be scheduled on sale of all 6 lots for October 27, 2021 at 11:00 a.m.

Party Information

Debtor(s):

Coldwater Development LLC

Represented By
Aram Ordubegian
M Douglas Flahaut

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Chapter 11

Annie Y Stoops
Dylan J Yamamoto

Movant(s):

Coldwater Development LLC

Represented By
Aram Ordubegian
M Douglas Flahaut
Annie Y Stoops
Dylan J Yamamoto

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#10.10 Scheduling and Case Management Conference in a Chapter 11 Case

fr. 3-3-21, 5-26-21, 7-14-21

Docket 1

Courtroom Deputy:

ZoomGov Appearance by:

8/30/21 - Eryk Escobar, (202)934-4168

8/31/21 - Mitchell Rishe, (213)269-6394

8/31/21 - Aram Ordubegian, (213)629-7410

9/1/21 - Christopher Harney, (714)549-6200

Tentative Ruling:

Set deadline for debtor to file notice of bar date and bar date. If debtors are able to arrange for refinancing for their properties, would this case remain in chapter 11 or do the debtors anticipate being in a position to move to dismiss these cases? Hearing required.

3/8/21 -- Court approved scheduling order with following dates:

L/D to file proofs of claim -- 4/30/21

L/D for governmental units to file proofs of claim -- 7/14/21

L/D to serve notice of bar date -- 3/8/21

Cont'd status conference -- 5/26/21 at 11:00 a.m.

L/D to file updated status report -- 5/14/21

Tentative Ruling for May 26, 2021:

According to declaration from debtor's counsel, on May 11, 2021, he received proof from the escrow company that the earnest money deposit of \$1.5M had

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been deposited into escrow. Proposed buyer was also supposed to sign a purchase agreement by that date. Has that occurred? If not, when is this supposed to occur? And how long does the buyer have to complete its due diligence? Hearing required.

Tentative Ruling for July 14, 2021:

Revisit status of case after conclusion of hearing on proposed sale.

Tentative Ruling for September 1, 2021:

Continue case status conference to date of hearing on sale of 6 lots --
October 27, 2021 at 11:00 a.m. Debtor should file updated status report not
later than October 15, 2021.

Party Information

Debtor(s):

Coldwater Development LLC

Represented By
Aram Ordubegian
M Douglas Flahaut
Annie Y Stoops
Dylan J Yamamoto

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2:21-11188 Glenroy Coachella, LLC

Chapter 11

#11.00 Stuart Rubin's Motion for Order Disqualifying Reed Smith LLP, and/or any of its Attorneys, from Representing U.S. Real Estate Credit Holdings III-A, LP Due to Conflicts of Interest Given its Ongoing Representation of Debtor, and Prior Representation of Debtors Manager

fr. 8-18-21

Docket 280

Courtroom Deputy:

ZoomGov Appearance by:

8/25/21 - Peter Kennedy, (213)457-8000

8/25/21- Marsha Houston, (213)457-8000

8/25/21- Christopher Rivas, (213)457-8000

8/30/21 - Timothy Laquer, (714)925-1779

8/30/21 - Kathryn Bayes, (213)457-6417

8/30/21 - Dustin Nirschl, (949)263-6566

8/30/21 - Mark Horoupian, (213)626-2311

8/30/21 - Damon Capozzola, (213)448-2709

8/31/21- Ed Hays, (949)413-7223

8/31/21- Steven Berman, (813)676-7234

Tentative Ruling:

Rulings on Evidentiary Objections [Docket 361]

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CONT... Glenroy Coachella, LLC

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Stuart Rubin Declaration

1. Sustain. Lack of personal knowledge.
2. Overrule.

Smith Declaration

1. Sustain. Hearsay. Testimony is being offered for truth of matter asserted.

McGarrigle Declaration

2. Sustain. Lack of foundation, personal knowledge. This is argument, not evidence.

Rulings of Evidentiary Objections [Docket 408]

Rubin Declaration

1. Overrule.
2. Overrule.
3. Overrule.
4. Overrule.
5. Overrule.
6. Sustain as to first sentence (best evidence rule). Overrule as to balance.
7. Sustain as to first sentence (best evidence rule). Overrule as to balance.
8. Overrule.
9. Overrule.

Tentative Ruling on the Merits

There is no evidence nor any reason to believe that any confidential information of movant was turned over to Reed Smith from Rosenfeld, Wolff & Klein or Raines Feldman. And there is no allegation that Reed Smith was ever retained to represent the principals in their individual capacities. Court agrees with trustee that only the trustee has any standing to object on the debtor's behalf -- and the trustee does not join in this motion and is prepared to waive any alleged conflict. The debtor's principals might have have standing in their own right to object here if Reed Smith had previously represented them in their individual capacities, but the fact that attorneys who worked at Reed Smith and have since left the firm once represented the debtor in an unrelated insurance matter that may or may not now be

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Courtroom 1539 Calendar**

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10:00 AM

CONT... Glenroy Coachella, LLC

Chapter 11

concluded does not have any tendency to suggest that the firm obtained confidential information concerning the debtor's principals that is in any way relevant to the instant matter. Moreover, debtor's principals have known about this alleged conflict since November of 2019. Why is it being raised now?

Deny motion. There is no disqualifying conflict here.

Party Information

Debtor(s):

Glenroy Coachella, LLC

Represented By
Daniel J Weintraub
Crystle Jane Lindsey
James R Selth

Movant(s):

Stuart Rubin

Represented By
Sean A OKeefe
Evan L Smith

Trustee(s):

Richard A Marshack (TR)

Represented By
Chad V Haes
D Edward Hays

**United States Bankruptcy Court
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10:00 AM

2:21-11627 BV Glendora LLC, a Colorado limited liability comp

Chapter 11

#12.00 Palo & Crystal Plesnik's Motion for Dismissal of the Case Pursuant to 11 U.S.C. Section 1112(b), or, Alternatively, for Relief from the Automatic Stay Pursuant to 11 U.S.C. Section 362(d)

Docket 48

***** VACATED *** REASON: MATTER RESCHEDULED TO 2PM TO
BE HEARD WITH OTHER MATTERS**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

MOVED TO 2 PM CALENDAR.

Party Information

Debtor(s):

BV Glendora LLC, a Colorado

Represented By
Jeffrey S Shinbrot

Movant(s):

Palo Plesnik

Represented By
Stella A Havkin
Robert S Marticello
Michael Simon

Crystal Plesnik

Represented By
Robert S Marticello
Michael Simon

**United States Bankruptcy Court
Central District of California
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Wednesday, September 1, 2021

Hearing Room 1539

10:00 AM

2:21-11627 BV Glendora LLC, a Colorado limited liability comp

Chapter 11

#13.00 Debtor's Motion To Approve Post-Petition Financing On An Administrative Priority Basis Pursuant to 11 U.S.C. Section 364(b) & Grant Administrative Priority Status To Amounts Advanced to Date

Docket 49

***** VACATED *** REASON: MATTER RESCHEDULED TO 2PM TO
BE HEARD WITH OTHER MATTERS**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

MOVED TO 2 PM CALENDAR.

Party Information

Debtor(s):

BV Glendora LLC, a Colorado

Represented By
Jeffrey S Shinbrot

Movant(s):

BV Glendora LLC, a Colorado

Represented By
Jeffrey S Shinbrot

**United States Bankruptcy Court
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10:00 AM

2:21-12761 Advanced Environmental Group LLC

Chapter 11

#14.00 Pacific6 Environmental Group, LLC's Motion for Order Revoking Debtor's Subchapter V Election, and Appointing Chapter 11 Trustee

Docket 100

Courtroom Deputy:

ZoomGov Appearance by:

8/16/21 - Joseph Walsh, II, (562)317-3300

8/26/21 - Gregory Jones, (310)429-9581

8/26/21 - Douglas Tabachnik, (732)780-2760

8/26/21 - Terry Coniglio, (562)491-4644

8/30/21 - Douglas Neistat, (818)382-6200

8/30/21 - Eryk Escobar, (202)934-4168

8/30/21 - Richard Golubow, (949)720-4135

8/31/21 - Richard Munro, (949)910-6600

8/31/21 - Leslie Cohen, (310)394-5900

Tentative Ruling:

Rulings on Evidentiary Objections\

Declaration of Garcia in support of opposition

1. Sustain (lack of relevance as to first sentence and lack of personal knowledge/foundation as to ballance).
2. Overrule. (Fact that objecting party believes that testimony is inaccurate does not make testimony inadmissible. Declarant should have personal knowledge of this.)

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CONT... Advanced Environmental Group LLC

Chapter 11

3. Overrule. Declarant should be able to make estimates of this kind.
4. Overrule as to first sentence. Sustain as to balance of excerpt based on lack of foundation/personal knowledge.

Tentative Ruling on Merits:

As the court explained at the hearing at which it removed the debtor as a debtor in possession, the standard for removing a debtor in possession in a subchapter V case is in substance identical to the standard for appointing a chapter 11 trustee in a nonsubchapter V chapter 11 case. Therefore, if the court determines that the debtor is ineligible to proceed as a debtor under subchapter V, it will not reinstall the debtor as a debtor in possession. It will grant the movant's request for the appointment of a chapter 11 trustee.

Court is not prepared to find that, based on the limited extent of the debtor's operations, it is ineligible to be a debtor under subchapter V, particularly since the debtor is trying to regain its ability to operate. A number of courts that have looked at the matter have permitted debtors who are no longer operating to proceed under subchapter V. However, court agrees with movants that debtor is ineligible to proceed under subchapter V because its liquidated noncontingent debts, both when considered alone and when considered in conjunction with those of its affiliate ACT, exceed the statutory maximum of \$7.5M.

Court agrees with movant that there is a difference between a claim that is disputed and one that is unliquidated. GOLO, NEAA and ENAA hold promissory notes and liens against the debtor's assets. These are clear, contractual claims directly against the debtor of a kind that have never been held to be contingent or unliquidated -- even if they are disputed. Contingent, disputed and unliquidated are each different things. That is why there are separate boxes for each of these categories on the schedules.

In Nicholes v. Johnny Appleseed (In re Nicholes), 184 B.R. 82 (B.A.P. 9th Cir. 1995), the Bankruptcy Appellate Panel explained these distinctions. With regard to contingency, the Panel offered the following,

"[D]ebts of a contractual nature -- i.e. claims for goods or services -- are

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Advanced Environmental Group LLC

Chapter 11

not contingent. In re Albano, 55 Bankr. 363, 366-67 (N.D. Ill. 1985) (liability on contract is "noncontingent" once contract is made, even if liability is subject to being avoided by some later occurrence).

* * * *

In the instant matter, the bankruptcy court correctly held that the debts for freight were noncontingent because "claims for freight already incurred ordinarily are not obligations dependent on the occurrence of a future event."

* * * *

None of the debts listed on debtor's schedules as "contingent" rely on some future extrinsic event to trigger liability. Rather, all events giving rise to liability for these debts arose when Boss Fruit received the agricultural goods and trucking services. Furthermore, debtor's potential personal liability stems from Boss Fruit's failure to pay for the PACA obligations. All of these events occurred prior to the debtor's bankruptcy filing.

Nicholes v. Johnny Appleseed (In re Nicholes), 184 B.R. 82, 88 (B.A.P. 9th Cir. 1995).

On the subject of liquidated debts, the BAP offered the following explanation:

A debt is liquidated if it is capable of "ready determination and precision in computation of the amount due." Fostvedt, 823 F.2d at 306 (citing Sylvester, 19 Bankr. at 673). The test for "ready determination" is whether the amount due is fixed or certain or otherwise ascertainable by reference to an agreement or by a simple computation. [*Citations omitted.*] Thus, debts arising from a contract are generally liquidated. Sylvester, 19 Bankr. at 673. On the other hand, debts based on unlitigated tort and quantum meruit claims are generally unliquidated because damages are not based on a fixed sum. [*Citations omitted.*]

* * * *

Although courts agree that a claim is liquidated if the amount is readily

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Chapter 11

determinable, courts are divided over whether a debt is unliquidated when there is a dispute as to liability or amount.

* * * *

The Ninth Circuit Bankruptcy Appellate Panel expanded Sylvester's definition of "ready determination" and analyzed the interplay between "disputed" debts and "unliquidated" debts in Wenberg. The Panel in Wenberg held that

the definition of "ready determination" turns on the distinction between a simple hearing to determine the amount of a certain debt, and an extensive and contested evidentiary hearing in which substantial evidence may be necessary to establish amounts or liability. On this issue, the bankruptcy judge has the best occasion to determine whether a claim will require an overly extensive hearing or whether the claim is subject to a bona fide dispute; therefore not subject to "ready determination."

* * * *

Under this test, even though disputed, debts of a contractual nature are generally liquidated. Sylvester, 19 Bankr. at 673; see also In re Pennypacker, 115 Bankr. 504, 507 (Bankr. E.D. Pa. 1990); Vaughan, 36 Bankr. at 938.

In any event, the bankruptcy court must determine whether the debts in question are subject to ready determination and whether computation of the amount due is a simple matter. If the court determines that such debts are readily determinable, then they are liquidated and included in the debtor's eligibility tally. If they are not readily determinable, then they are unliquidated and excluded from the eligibility tally.

Nicholes v. Johnny Appleseed (In re Nicholes), 184 B.R. 82, 89-91 (B.A.P. 9th Cir. 1995)

In its opposition, the debtor asserts that the debts of GOLO, NEAA and ENAA should not be included because they are inflated, unsubstantiated and have

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CONT... Advanced Environmental Group LLC

Chapter 11

yet to be litigated to a final amount. Again, this is not the standard. The debtor may not exclude these contractual obligations from its calculation merely because they have not been reduced to a final judgment. Even a straightforward calculation of amounts due under these loans would produce a balance in excess of \$7,500,000. As of the petition date, these creditors claim to be owed \$7,726,871.80, but even if the debtor is correct that these amounts are inflated, debtor acknowledges that it owes \$4,414,817.77 in liquidated and noncontingent claims to other creditors. The correct amounts due these three creditors would need to be less than one-half of the amount the creditors claim for the debtor's noncontingent, liquidated debts to come within the statutory limit. (Court notes that there is sufficient evidence in the motion for the court to conclude that there are additional noncontingent liquidated debts that would be sufficient to cause the debtor to exceed the statutory maximum as well.)

Moreover, court agrees that the eligibility requirements of subchapter V require the debtor to include debts of any affiliates also in bankruptcy, except for single asset real estate debtors, in its calculations. There is no dispute that ACT is an affiliate. Its schedules show noncontingent liquidated claims of \$7,405,700.51. (Again, the fact that some of these debts may be disputed is irrelevant.) This amount, taken together with the \$4,414,817.77 in noncontingent liquidated debts scheduled by AEG is sufficient to make AEG ineligible to be a subchapter V debtor.

Accordingly, grant motion. Declare debtor ineligible to proceed in subchapter V and its subchapter V election to be void. Appoint chapter 11 trustee in resulting nonsubchapter V case for the same reasons the court removed the debtor as a debtor in possession while the debtor was proceeding under subchapter V.

Party Information

Debtor(s):

Advanced Environmental Group

Represented By
Leslie A Cohen

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CONT... Advanced Environmental Group LLC

Chapter 11

Movant(s):

Pacific6 Environmental, LLC

Represented By
Richard H Golubow

Trustee(s):

Gregory Kent Jones (TR)

Represented By
Daniel A Lev

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10:00 AM

2:21-12761 Advanced Environmental Group LLC

Chapter 11

#14.10 Scheduling and Case Management Conference in a SubChapter V Chapter 11 Case

fr. 8-18-21

Docket 1

Courtroom Deputy:

ZoomGov Appearance by:

8/26/21 - Gregory Jones, (310)429-9581

8/26/21 - Douglas Tabachnik, (732)780-2760

8/26/21 - Terry Coniglio, (562)491-4644

8/30/21 - Douglas Neistat, (818)382-6200

8/30/21 - Eryk Escobar, (202)934-4168

8/30/21 - Richard Golubow, (949)720-4135

8/31/21 - Leslie Cohen, (310)394-5900

Tentative Ruling:

Revisiting status of case after conclusion of related matter on calendar.

Party Information

Debtor(s):

Advanced Environmental Group

Represented By
Leslie A Cohen

Trustee(s):

Gregory Kent Jones (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, September 1, 2021

Hearing Room 1539

10:00 AM

2:21-12762 Advanced Cleanup Technologies, Inc.

Chapter 11

#14.20 Scheduling and Case Management Conference in a Chapter 11 Case

FR. 8-18-21

Docket 1

Courtroom Deputy:

ZoomGov Appearance by:

8/26/21 - Gregory Jones, (310)429-9581

8/30/21 - Douglas Neistat, (818)382-6200

8/30/21 - Eryk Escobar, (202)934-4168

8/30/21 - Richard Golubow, (949)720-4135

Tentative Ruling:

Does the chapter 11 trustee have anything to report? Hearing required.

Party Information

Debtor(s):

Advanced Cleanup Technologies,

Represented By
Leslie A Cohen

Trustee(s):

CASE REOP/CONV/OR CLOSED

Pro Se

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Hearing Room 1539

10:00 AM

2:21-15342 Vitaly Ivanovich Smagin

Chapter 15

#15.00 Foreign Debtor Vitaly Ivanovich Smagin's Motion for Appointment of an Examiner Pursuant to Section 1521(a)(5) of the Bankruptcy Code

Docket 54

***** VACATED *** REASON: PER COURT ORDER ENTERED ON
8/13/21 THIS MOTION IS OFF CALENDAR.**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Per Court's August 13, 2021 order, this motion has been withdrawn. OFF CALENDAR. NO APPEARANCE REQUIRED.

Party Information

Debtor(s):

Vitaly Ivanovich Smagin

Represented By
Hamid R Rafatjoo
Nicholas O Kennedy
Thomas Tysowsky

Movant(s):

Vitaly Ivanovich Smagin

Represented By
Hamid R Rafatjoo
Nicholas O Kennedy
Thomas Tysowsky

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Hearing Room 1539

11:00 AM

2:20-11547 Gennady Moshkovich

Chapter 7

#100.00 NVSI, Inc's. Motion for Order Approving Payment of Claim for Administrative Expenses (11 U.S.C. § 503(a), 11 U.S.C. § 503(b)(1)(A), 11 U.S.C. § 503 (b)(3), and 11 U.S.C. § 503(b)(4))

fr. 6-9-21, 7-28-21, 8-11-21

Docket 356

***** VACATED *** REASON: CONT'D. TO 9/29/21 @ 10AM**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

An attorney for a creditor who makes a substantial contribution to a chapter 11 case pursuant to section 503(b)(3)(D) may recover reasonable compensation for professional services rendered as an administrative expense under section 503(b)(4). In re Mortgages Ltd., 2010 Bankr. LEXIS 5093, 2010 WL 6259981, at *7 (9th Cir. BAP Aug. 4, 2010). The principal test of substantial contribution is "the extent of benefit to the estate." In re Cellular 101, Inc., 377 F.3d 1092, 1096-97 (9th Cir. 2004), citing In re Christian Life Ctr., 821 F.2d 1370, 1373 (9th Cir. 1987); see also Pierson & Gaylen v. Creel & Atwood (In re Consol. Bancshares, Inc.), 785 F.2d 1249, 1253 (5th Cir. 1986) (reaffirming that "services which substantially contribute to a case are those which foster and enhance, rather than retard or interrupt the progress of[f] reorganization"). As stated in In re Catalina Spa & R.V. Resort, Ltd., 97 B.R. 13, 21 (Bankr. S.D. Cal. 1989):

Compensation cannot be freely given to all creditors who take an active role in bankruptcy proceedings, rather, it must be preserved for those rare occasions when the creditor's involvement truly fosters and enhances the administration of the estate. The integrity of § 503(b) can only be maintained by strictly limiting compensation to extra ordinary [sic] creditor actions which lead directly to significant and tangible benefits to the creditors, debtor, [*9] or the estate. While § 503 was enacted to encourage meaningful creditor participation, it should not become a vehicle for reimbursing every creditor who elects to hire an attorney.

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11:00 AM

CONT... Gennady Moshkovich

Chapter 7

In re PG&E Corp., No. 19-30088-DM, 2021 Bankr. LEXIS 371, at *8-9 (Bankr. N.D. Cal. Feb. 17, 2021).

None of the subsections of section 503(b) are applicable on the facts of this case. NVSI cannot recover for the costs of negotiating or drafting the sale agreement. This was never within the contemplation of the parties. The debtor did not obtain a sale procedures order authorizing a cost reimbursement to the stalking horse, and NVSI was not the stalking horse. Had the sale closed, or if NSVI had been outbid at a sale, it would not have been able to recover these costs.

The costs that NVSI incurred were not the actual and necessary costs of preserving the estate within the meaning of section 503(b)(1)(A). This fact pattern bears no resemblance to the instances in which fees and expenses have been awarded under this section. And 503(b)(3) does not provide a basis for allowance of the claim here in that it is far from clear that NVSI is a creditor within the meaning of that section and this is not a chapter 9 or chapter 11 case.

Moreover, the Court cannot find on these facts that NVSI provided a substantial contribution to this case. If NVSI had not entered into an agreement to purchase the property by September 25, 2020, the Court would have converted the case to chapter 7 at that time, and the chapter 7 trustee would not have been under the time crunch imposed by the court and NVSI's demands that it close the sale as expeditiously as possible. The court is not ready to conclude that no other alternative would have been available other than a foreclosure by Bobs. And, in any event, that contribution, if there was one, would have been made during the course of the resulting chapter 7 case, not in the chapter 11.

However, the more difficult question is whether there is a basis for the allowance of an expense of administration under the reasoning of Reading Co. v. Brown, 391 U.S. 471 (1968). In that case, the Supreme Court held that damages resulting from the negligence of a receiver acting within the scope of his authority as receiver give rise to actual and necessary costs of a chapter XI arrangement even when there was no actual benefit to the estate.

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CONT... Gennady Moshkovich

Chapter 7

In Reading, the negligence of the receiver and/or a workman retained by the receiver resulted in a fire at the debtor's real property that spread to surrounding properties, causing 146 separate fire damage claims.

Reading can be read to support the proposition that it is appropriate to grant administrative status to fees arising out of post-petition transactions or contracts with a debtor in possession or a trustee when wrongful conduct on the part of the debtor in possession or trustee injures third parties. However, if there is no wrongful conduct on the part of the trustee, courts are unlikely to allow an administrative claim. See, e.g., Total Minatome Corp. v. Jack/Wade Drilling, Inc. (In re Jack/Wade Drilling, Inc.), 258 F.3d 385 (5th Cir. 2001) (although the trustee's conduct in bringing a breach of contract action that he eventually lost caused a third party to incur expense, as the trustee's conduct was not wrongful, no fee award was appropriate).

So how does this reasoning apply here? Did the debtor engage in wrongful conduct during the course of administering the estate that led NVSI to incur fees and expenses? He made optimistic representations to the court and the parties that it was unlikely that there would be significant capital gains liability if the sale were consummated. He failed to perform under the contract, causing the court to convert the case as a means to put a trustee in place promptly so that the contract could be performed. But is there any legal theory under which NVSI would be entitled to recover its attorneys' fees and expenses now that the orders approving the contract have been vacated? Could NVSI establish damages for fraud? Did the debtor *knowingly* make a false representation about the likelihood that there would be capital gains liability? Is there a contractual theory of recovery for attorneys' fees under the now-unenforceable contract in light of the fact that NVSI did not ultimately become the prevailing party?

In all the cases in which the holding of the Reading case has been used to grant administrative status to a claim asserted against the estate, there was an underlying tort or contract theory that entitled the party asserting the claim to recover. The question was whether or not the claim asserted should be treated as an administrative claim. What is the nonbankruptcy theory of recovery here? In the absence of a workable theory of liability, the Court would not be inclined to extend the holding of Reading to cover this fact

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CONT... **Gennady Moshkovich**
pattern.

Chapter 7

Hearing required.

6/23/21 -- Court approved stipulation continuing hearing to August 11, 2021 at 11:00 a.m. NO APPEARANCE REQUIRED ON JULY 28, 2021.

7/16/21 -- Court approved stipulation continuing hearing to September 1, 2021 at 11:00 a.m. NO APPEARANCE REQUIRED ON AUGUST 11, 2021.

8/6/21 -- Court approved stipulation continuing hearing to September 29, 2021 at 10:00 a.m. (See order for additional dates.) NO APPEARANCE REQUIRED ON SEPTEMBER 1, 2021.

Party Information

Debtor(s):

Gennady Moshkovich

Represented By
David R Haberbusch

Movant(s):

NVSI, INC., its successors and/or

Represented By
Joshua L Scheer
Timothy J Silverman

Trustee(s):

Heide Kurtz (TR)

Represented By
Thomas H Casey

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Hearing Room 1539

11:00 AM

2:16-13852 East Coast Foods, Inc.

Chapter 11

#101.00 Post-Confirmation Scheduling and Case Management Conference in a Chapter 11 Case

fr 5-11-16, 6-7-16, 7-21-16, 7-27-16, 9-28-16, 10-18-16, 11-29-16, 12-7-16, 3-8-17, 6-14-17, 7-11-17, 7-26-17, 8-15-17, 10-18-17, 1-10-18, 2-14-18, 3-1-18, 6-7-18, 10-17-18, 2-6-19, 8-7-19, 9-11-19, 12-11-19, 1-8-20, 1-9-20, 3-18-20, 5-6-20, 8-5-20, 10-21-20, 1-27-21, 5-26-21

Docket 1

***** VACATED *** REASON: CONT'D. TO 12/8/21 @ 11AM**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Tentative Ruling for August 16, 2017:

Court waived the requirement that the trustee file an updated status report in connection with this status conference and set this date as a holding date. Are there any upcoming hearings scheduled in this chapter 11 case?

Final Ruling for August 16, 2017:

Continue status conference to October 18, 2017 at 2:00 p.m. Updated status report should be served and filed not later than October 6, 2017.

Tentative Ruling for October 18, 2017:

Continue case status conference to January 10, 2018 at 2:00 p.m. Disclosure statement should be noticed for same date and time, provided it is filed and served not less than 42 days before this date. Waive requirement of updated status report. APPEARANCES WAIVED ON OCTOBER 18, 2017.

1/9/18 -- Court approved stipulation continuing status conference to **February 14, 2018 at 11:00 a.m.** OFF CALENDAR FOR JANUARY 10, 2018.

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CONT... East Coast Foods, Inc.

Chapter 11

Tentative Ruling for February 14, 2018:

Continue case status conference to March 1, 2018 at 10:00 a.m. to be heard concurrently with other matters on calendar at that date and time. OFF CALENDAR FOR FEBRUARY 14, 2018. NO APPEARANCE REQUIRED.

Tentative Ruling for June 6, 2018:

Revisit status of case after conclusion of hearing on plan confirmation.

Tentative Ruling for October 17, 2018:

Court has reviewed post-confirmation status report. Continue post-confirmation status conference to February 6, 2019 at 11:00 a.m. Plan Trustee should file and serve updated status report not later than January 25, 2019. APPEARANCES WAIVED ON OCTOBER 17, 2018.

Tentative Ruling for February 6, 2019:

Court has reviewed the trustee's status report and updated status report. Discuss with the parties' Mr. Hudson's decision to move the Pico location less than a mile away to a different location on La Brea.

Tentative Ruling for August 7, 2019:

Has Hudson made the second Shortfall Payment yet (\$975,000)? If not, continue status conference until shortly after deadline for cure of this default (August 10, 2019) to see whether default is cured.

What is the status of the dispute with regard to the La Brea Restaurant? The occurrence of another restricted transaction without the trustee's consent constitutes yet another event of default under the plan. (NOTE: There is no meaningful distinction between closing the Pico location and driving it out of business, forcing it to close as unprofitable, by opening a new location less than a mile away on La Brea. No businessperson who was actually attempting to operate the Pico location profitably or to fulfill his obligations under the plan in good faith would do this.)

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11:00 AM

CONT... East Coast Foods, Inc.

Chapter 11

Hearing required.

Tentative Ruling for September 11, 2019:

Court has reviewed the plan trustee's status report. Continue case status conference to December 11, 2019 at 11:00 a.m. Plan trustee should file and serve updated status report not later than December 2, 2019.

Tentative Ruling for December 11, 2019:

Continue case status conference to January 8, 2020 at 11:00 a.m. so that it can be after the foreclosure sale scheduled for December 12, 2019. Plan trustee need not file an updated status report. Counsel for trustee can report orally at the January 8, 2020 conference. APPEARANCES WAIVED ON DECEMBER 11, 2019.

Tentative Ruling for January 9, 2020:

What, if anything, has transpired since the last status report? Did a foreclosure sale occur on December 12? If so, what happened at the sale? Hearing required.

Tentative Ruling for March 18, 2020:

Did the foreclosure proceed on March 16? If not, why not? How will the closure of restaurants in Los Angeles impact the trustee's ability to perform under the confirmed plan? Hearing required.

Final Ruling for March 18, 2020:

Parties have entered into a second amended forbearance agreement, postponing foreclosure to April 15, 2020 in exchange for an additional payment of \$12,500. Continue status conference to May 6, 2020 at 11:00 a.m. Plan trustee should file updated status report addressing plan compliance issues not later than April 24, 2020.

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11:00 AM

CONT... East Coast Foods, Inc.

Chapter 11

Tentative Ruling for May 6, 2020:

Court has reviewed trustee's status report. Continue case status conference to August 5, 2020 at 11:00 a.m. Plan trustee should file updated status report not later than July 24, 2020. APPEARANCES WAIVED ON MAY 6, 2020.

Tentative Ruling for August 5, 2020:

Court has reviewed the plan trustee's status report. Continue status conferences to October 21, 2020 at 11:00 a.m. Reorganized debtor should file updated status report not later than October 9, 2020. APPEARANCES WAIVED ON AUGUST 5, 2020.

Tentative Ruling for October 21, 2020:

Court has reviewed the plan trustee's status report. Continue status conferences to January 27, 2021 at 11:00 a.m. Reorganized debtor should file updated status report not later than January 15, 2021. APPEARANCES WAIVED ON OCTOBER 21, 2020.

Tentative Ruling for January 27, 2021:

Court has reviewed the plan trustee's status report. Continue status conferences to May 26, 2021 at 11:00 a.m. Reorganized debtor should file updated status report not later than May 14, 2021. APPEARANCES WAIVED ON JANUARY 27, 2021.

Tentative Ruling for May 26, 2021:

Court has reviewed the plan trustee's status report. Continue status conferences to September 1, 2021 at 11:00 a.m. Reorganized debtor should file updated status report not later than August 20, 2021. APPEARANCES WAIVED ON MAY 26, 2021.

Tentative Ruling for September 1, 2021:

Court has reviewed the plan trustee's status report. Continue status

**United States Bankruptcy Court
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11:00 AM

CONT... East Coast Foods, Inc.

Chapter 11

conferences to December 8, 2021 at 11:00 a.m. Reorganized debtor should
file updated status report not later than November 24, 2021.
APPEARANCES WAIVED ON SEPTEMBER 1, 2021.

Party Information

Debtor(s):

East Coast Foods, Inc.

Represented By
Vahe Khojayan
Philip E Strok
Michael Jay Berger

Trustee(s):

Bradley D. Sharp (TR)

Represented By
Zev Shechtman
Uzzi O Raanan ESQ
John N Tedford IV

Brian Weiss

Represented By
Robert S Marticello
Philip E Strok
Michael Simon
Timothy W Evanston

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Sheri Bluebond, Presiding
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Wednesday, September 1, 2021

Hearing Room 1539

11:00 AM

2:20-12306 Rancho Cielo Estates, LTD

Chapter 11

#102.00 Scheduling and Case Management Conference in a Chapter 11 Case

fr. 4-29-20, 8-5-20, 10-21-20, 12-16-20, 3-10-21, 5-26-21

Docket 1

***** VACATED *** REASON: CONT'D. TO 10/27/21 @ 2PM**

Courtroom Deputy:

ZoomGov Appearance by:

8/26/21 - Michael Breslauer, (619)231-0303

Tentative Ruling:

Tentative Ruling for April 29, 2020:

Set deadline for service of notice of bar date and bar date. Continue case status conference approximately 90 to 120 days. Set deadline for filing updated status report.

4/29/20 -- Court approved scheduling order setting following dates:

L/D to mail notice of bar date -- May 15, 2020

Bar date -- July 10, 2020

Cont'd status conference -- August 5, 2020 at 11:00

L/D to file updated status report -- July 24, 2020

Tentative Ruling for August 5, 2020:

Were the proofs of claim filed in line with the debtor's expectations or did anything surprising get filed? What does the debtor anticipate that its plan will look like?

Hearing required.

Final Ruling for August 5, 2020:

Continue case status conference to October 21, 2020 at 11:00 a.m. Debtor should file

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CONT... Rancho Cielo Estates, LTD

Chapter 11

updated status report not later than October 9, 2020.

Tentative Ruling for October 21, 2020:

Set deadline for filing sale motion and deadline for filing plan of reorganization.

10/23/20 -- Court entered scheduling order with following dates:

L/D for debtor to file sale motion -- November 25, 2020

Hearing on sale motion -- December 16, 2020 at 11:00 a.m.

Continued status conference -- December 16, 2020 at 11:00 a.m.

Requirement of updated status report is waived unless no hearing on sale motion is conducted at same time as status conference, in which event status report should be filed by December 4, 2020.

Tentative Ruling for December 16, 2020:

Although Court reserves the right to dismiss a case at a status conference in the order setting the initial status conference, court is concerned that a sua sponte dismissal would not provide sufficient notice to parties in interest. Continue case status conference to date that can serve as the date of a hearing on a motion to dismiss that the debtor should file.

Tentative Ruling for March 10, 2021:

Continue status conference to May 26, 2021 at 11:00 a.m. (to see if debtor has filed motion for approval of sale procedures by that date). Debtor should file updated status report by May 14, 2021. APPEARANCES WAIVED ON MARCH 10, 2021.

Tentative Ruling for May 26, 2021:

Deny request that status report filed by RCLC be stricken, but grant debtor's request for a further continuance. Continue status conferences to September 1, 2021 at 11:00 a.m. Debtor should file updated status report not later than August 20, 2021. APPEARANCES WAIVED ON MAY 26, 2021.

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CONT... Rancho Cielo Estates, LTD

Chapter 11

Tentative Ruling for September 1, 2021:

Continue case status conference to October 27, 2021 at 2:00 p.m. to be heard concurrently with disclosure statement that debtor intends to file and notice for hearing on that date. Debtor should file updated status report not later than October 18, 2021, if, for any reason, the debtor will not be moving forward with a hearing on a disclosure statement on October 27, 2021 at 2:00 p.m. APPEARANCES WAIVED ON SEPTEMBER 1, 2021.

Party Information

Debtor(s):

Rancho Cielo Estates, LTD

Represented By
Jeffrey S Shinbrot

**United States Bankruptcy Court
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Wednesday, September 1, 2021

Hearing Room 1539

2:00 PM

2:21-11627 BV Glendora LLC, a Colorado limited liability comp

Chapter 11

#200.00 Palo & Crystal Plesnik's Motion for Dismissal of the Case Pursuant to 11 U.S.C. Section 1112(b), or, Alternatively, for Relief from the Automatic Stay Pursuant to 11 U.S.C. Section 362(d)

Docket 48

Courtroom Deputy:

ZoomGov Appearance by:

8/30/21 - Susan T. Collins, (213)974-1860

8/30/21 - Jeffrey Shinbrot, (424)202-1143

8/30/21 - Eryk Escobar, (202)934-4168

8/31/21 - Robert Marticello, (714)445-1023

9/1/21 - Marc Forsythe, (949)798-2460

Tentative Ruling:

Deny request for dismissal. Movant has not established that the filing was in bad faith. It is beyond dispute that the debtor's ability to operate the property as a fitness facility was negatively impacted by the pandemic and that a reorganization was necessary.

With regard to request for relief from stay, court is not yet ready to conclude that there is no reasonable prospect of reorganization within a reasonable period. Now that a plan and disclosure statement have been filed, court will make that assessment in the context of the plan confirmation process.

Revisit motion at conclusion of related matters on calendar. If court continues hearing on disclosure statement, continue hearing on request for relief from stay to coincide with continued hearing on disclosure statement.

Party Information

**United States Bankruptcy Court
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Los Angeles
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Wednesday, September 1, 2021

Hearing Room 1539

2:00 PM

CONT... BV Glendora LLC, a Colorado limited liability comp

Chapter 11

Debtor(s):

BV Glendora LLC, a Colorado

Represented By
Jeffrey S Shinbrot

Movant(s):

Palo Plesnik

Represented By
Stella A Havkin
Robert S Marticello
Michael Simon

Crystal Plesnik

Represented By
Robert S Marticello
Michael Simon

**United States Bankruptcy Court
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Wednesday, September 1, 2021

Hearing Room 1539

2:00 PM

2:21-11627 BV Glendora LLC, a Colorado limited liability comp

Chapter 11

#201.00 Debtor's Motion To Approve Post-Petition Financing On An Administrative Priority Basis Pursuant to 11 U.S.C. Section 364(b) & Grant Administrative Priority Status To Amounts Advanced to Date

Docket 49

Courtroom Deputy:

ZoomGov Appearance by:

8/30/21 - Susan T. Collins, (213)974-1860

8/30/21 - Jeffrey Shinbrot, (424)202-1143

8/30/21 - Eryk Escobar, (202)934-4168

8/31/21 - Robert Marticello, (714)445-1023

9/1/21 - Marc Forsythe, (949)798-2460

Tentative Ruling:

Secured creditor has objected to the financing on a variety of grounds. One such objection is that the motion is premature and should be considered in conjunction with confirmation; however, if the Court correctly understands the terms of the proposed financing, it is a condition precedent to the effectiveness of the financing that an order confirming a plan be entered on or before March 31, 2022. If this is correct, court is not troubled that the financing will be considered in advance of confirmation.

Secured creditor objects that this is not an arms-length financing. That is true, obviously, but the closeness of the relationship has resulted in a financing that is far more favorable to the debtor than anything that an independent lender would provide. The loan is unsecured. The interest rate is zero percent, and no payments are due for a period of three years after the effective date. Secured creditor is also concerned that the lender is not required to provide any funding and that, in light of the nature of the

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2:00 PM

CONT...

BV Glendora LLC, a Colorado limited liability comp

Chapter 11

relationship between the borrower and the lender, the two may collude in such a way as to shift risk from the lender to the secured creditor. Court agrees that there may be opportunities for mischief here in light of the fact that, once payments fall due under the new financing, the debtor could voluntarily default, resulting in acceleration of the entire indebtedness, or the fact that the debtor could conduct itself in such a way as to cause a termination of the financing, again resulting in an acceleration of the entire indebtedness. Order approving financing could address these issues by providing, for example, that the debtor is prohibited from prepaying amounts due lender without secured creditor's consent and that secured creditor shall be permitted to accelerate its debt and exercise its rights and remedies (i.e., foreclose) in the event that the financing from Cadence terminates or accelerates.

With regard to the request for "retroactive" approval of the amounts expended by Cadence to date, secured creditor seems to miss that no court approval is required for the debtor to incur unsecured credit in the ordinary course of business and that debt incurred post-petition in this manner for expenses that clearly benefit the estate would be administrative expenses that would need to be paid in full on the effective date of a plan. Here, the debtor is agreeing that these amounts were advances rather than capital contributions, but the lender is agreeing that they need not be repaid until three years after the effective date of a plan. The court is comfortable with the evidence provided by the debtor as to the extent to which incurring debt in this manner for expenses of this kind are ordinary in the industry (and that Rothacker, who owns 100 percent of the lender can testify from personal knowledge on behalf of the lender as well as the debtor), but court agrees with secured creditor that it is not entirely clear that it was within the ordinary course of business for Cadence and the debtor to treat amounts paid by Cadence for the benefit of the debtor as loans rather than as capital contributions (see recitation in MOR as to amount of prepetition unsecured debt, which did not include amounts advanced by Cadence) or that it was the intention of the parties when Cadence paid these expenses that these payments be treated as loans. (It might still be in the debtor's best interest to agree to treat these advances as loans, even if there is an argument that they should be treated as capital contributions in light of the other benefits available under/from the financing, but the motion has not presented the facts in this light or requested approval

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CONT... BV Glendora LLC, a Colorado limited liability comp
of a compromise.)

Chapter 11

Accordingly, subject to the modification referenced above, grant motion to the extent that it seeks approval of post-confirmation financing. Continue hearing with regard to debtor's request for an order determining that amounts already advanced post-petition should be treated as expenses of administration and set schedule for further briefing and evidentiary hearing.

Party Information

Debtor(s):

BV Glendora LLC, a Colorado

Represented By
Jeffrey S Shinbrot

Movant(s):

BV Glendora LLC, a Colorado

Represented By
Jeffrey S Shinbrot

**United States Bankruptcy Court
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Wednesday, September 1, 2021

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2:21-11627 BV Glendora LLC, a Colorado limited liability comp

Chapter 11

#202.00 Debtor's Original Disclosure Statement Describing Original Chapter 11 Plan

Docket 31

Courtroom Deputy:

ZoomGov Appearance by:

8/30/21 - Susan T. Collins, (213)974-1860

8/30/21 - Jeffrey Shinbrot, (424)202-1143

8/30/21 - Eryk Escobar, (202)934-4168

8/31/21 - Robert Marticello, (714)445-1023

9/1/21 - Marc Forsythe, (949)798-2460

Tentative Ruling:

Court is aware that debtor plans to file amended disclosure statement, but the court has the following additional comments with regard to the content of the plan and disclosure statement that the debtor should take into consideration when drafting amended versions of these documents (in no particular order):

1. Does the debtor have a La Salle problem? The disclosure statement should discuss how the debtor intends to demonstrate that it is not violating the absolute priority rule by permitting only the insiders to acquire an ownership interest in the reorganized debtor and not subjecting the ownership interests to the market.

2. Although issues of feasibility and the adequacy of the new value contribution are fundamentally confirmation issues, court agrees that plan in its current form is not feasible as it does not require Cadence to advance the funds necessary to finance the debtor's post-confirmation operations until the point at which rents generated by the property can supply the required cash flow. Moreover, there is no discussion in either the plan or the disclosure

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CONT... BV Glendora LLC, a Colorado limited liability comp Chapter 11

statement as to what will happen when the balloon due the Plesnicks become due. There is also no discussion of what happens in the event of default.

Feasibility requires a finding that confirmation is not likely to be followed by a need for further reorganization or liquidation not contemplated by the plan. The debtor should include the following changes to the plan and/or the disclosure statement (substantive requirements should go in the plan and be described in the disclosure statement; explanatory information should go in the disclosure statement):

- Plan should specify what happens in the event of a default in payments;

- Plan should give the debtor a set amount of time to refinance or sell in the event it defaults on payments to secured creditors and, if the debtor has not accomplished the sale or refinance within this period, permit the secured creditor to foreclose;

- Plan should obligate Cadence to extend financing or disclosure statement should specify that Cadence has no duty to advance funds and that debtor cannot be sure funds will be forthcoming and disclosure statement should specify what assumptions the debtor is making as to whether or not Cadence will advance funds and why it believes its assumptions are reasonable;

- Disclosure statement should describe terms of financing from Cadence;

- Disclosure statement should not just incorporate projections attached as an Exhibit and say they show feasibility. Disclosure statement should discuss risks and assumptions -- what assumptions is the debtor making as to how long it will take to find a tenant; what the TIs will cost (and who will pay them); what debtor plans to do at the end of 7 years and why debtor believes it will be able to pay off the balloon at that time.

3. Adequacy of information -- in addition to the foregoing, disclosure statement should disclose payments by Cadence to unsecured creditors, relationship between debtor and Cadence, and how debtor came up with the \$100,000 figure as the amount of the new value contribution. Plan and disclosure statement should also include the estimated amount of Plesnik's deficiency claim and the other (if there are any) general unsecured claims.

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CONT... BV Glendora LLC, a Colorado limited liability comp Chapter 11

4. Plan provides for monthly payments to unsecured creditors that will add up to 10 percent of the amount of the unsecured debt, but court will have no way to tell whether or not debtor has defaulted on these payments. Debtor should specify in the plan treatment sections of the plan and disclosure statement how much it will pay every month.

5. Assumption/Rejection portions of the plan and disclosure statement should provide a catch all/default (either assumption or rejection) for any executory contracts or unexpired leases that are overlooked.

Set deadline for debtor to file amended plan and disclosure statement and set continued hearing on disclosure statement.

Party Information

Debtor(s):

BV Glendora LLC, a Colorado

Represented By
Jeffrey S Shinbrot

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2:21-11627 BV Glendora LLC, a Colorado limited liability comp

Chapter 11

#203.00 Scheduling and Case Management Conference in a Chapter 11 Case

fr. 4-21-21, 6-15-21

Docket 1

Courtroom Deputy:

ZoomGov Appearance by:

8/30/21 - Susan T. Collins, (213)974-1860

8/30/21 - Jeffrey Shinbrot, (424)202-1143

8/30/21 - Eryk Escobar, (202)934-4168

8/31/21 - Robert Marticello, (714)445-1023

9/1/21 - Marc Forsythe, (949)798-2460

Tentative Ruling:

Set bar date and deadline for debtor to serve notice of bar date. Would it make sense for the court to order the debtor and the seller to mediation or are negotiations proceeding well on their own? Hearing required.

4/26/21 -- Court approved scheduling order with following dates:

L/D to serve notice of bar date -- April 28, 2021

Bar date -- July 1, 2021

L/D to file updated status report -- June 4, 2021

Cont'd status conference -- June 15, 2021 at 10:00 a.m.

Tentative Ruling for June 15, 2021:

Debtor has filed plan and disclosure statement, but has not set them for hearing. Set date and time for hearing on disclosure statement and deadline for filing oppositions. (Parties are planning to attend mediation in mid-July.)

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CONT... BV Glendora LLC, a Colorado limited liability comp Chapter 11

Continue status conference to date of hearing on disclosure statement.
Hearing required.

Tentative Ruling for September 1, 2021:

Revisit status of case after conclusion of hearing on disclosure statement.
Continue case status conference to date of continued hearing on disclosure statement.

Party Information

Debtor(s):

BV Glendora LLC, a Colorado

Represented By
Jeffrey S Shinbrot